ECORD
AND
BRIEFS

No. 15-1293

Supreme Court, U.S.
FILED
NOV 16 2016
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

MICHELLE K. LEE, UNDER SECRETARY COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE,

Petitioner,

v.

SIMON SHIAO TAM,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR ASIAN AMERICANS ADVANCING JUSTICE | AAJC AND OTHER CIVIL RIGHTS AND ADVOCACY GROUPS AS *AMICI CURIAE* IN SUPPORT OF NEITHER PARTY

CECELIA CHANG
ASIAN AMERICANS ADVANCING JUSTICE | AAJC
1620 L Street, Suite 1050
Washington, DC 20036
(202) 296-2300

DANIEL J. KORNSTEIN
Counsel of Record
ALANNA SMALL
EMERY CELLI BRINCKERHOFF & ABADY LLP
600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000
dkornstein@ecbalaw.com

Counsel for Amici Curiae

269128

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF CITED AUTHORITIES iii

INTEREST OF *AMICI CURIAE* AND SUMMARY OF ARGUMENT 1

ARGUMENT 4

I. PROTECTING RECLAMATION EFFORTS DOES NOT JUSTIFY FACIALLY INVALIDATING THE LANHAM ACT'S DISPARAGEMENT PROVISION 4

A. The Lanham Act and Federal Registration of Trademarks Are Designed to Facilitate Commerce, Not Protect or Promote Private Expression 5

B. Opening the Property-Based Benefits of Federal Registration to Slurs and Derogatory Marks Impairs Reclamation Efforts by Minority Communities 8

II. VOIDING SECTION 2(a) IS COUNTERPRODUCTIVE WHEN EXPRESSIVE CONCERNS CAN BE WEIGHED UNDER A BALANCED DISPARAGEMENT ANALYSIS 13

Table of Contents

Page

A. The Compelling Interests at Stake Call for a Balanced Remedy. 13

B. A More Nuanced Approach 15

1. Whether the Mark Is Part of Reclamation Efforts. 17

2. The history and potential harmful effects of the term 20

3. The expressive context of the mark and requested use 26

CONCLUSION 28

APPENDIX 1a

TABLE OF CITED AUTHORITIES

Page

CASES

Ariz. State Legislature v. Ariz. Independent Redistricting Comm'n, 135 S. Ct. 2652 (2015) 16

Ballew v. Georgia, 435 U.S. 223 (1978) 21

Bolger v. Youngs Drug Prods. Corp., 463 U.S. 60 (1983) 14

Brown v. Board of Educ., 347 U.S. 483 (1954) 21

Cantwell v. Connecticut, 310 U.S. 296 (1940) 4

Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y., 447 U.S. 557 (1980) 27

Crowell v. Benson, 285 U.S. 22 (1932) 16

Dennis v. United States, 341 U.S. 494 (1951) 17

Gratz v. Bollinger, 539 U.S. 244 (2003) 21

Cited Authorities

Page

In re Heeb Media, LLC,
89 U.S.P.Q.2d (BNA) 1071 (T.T.A.B. 2008) 27

In re Trade-Mark Cases,
100 U.S. 82 (1879) 5, 6

Jones v. Alfred H. Mayer Co.,
392 U.S. 409 (1968) 21

McDermott v.
S.F. Women's Motorcycle Contingent,
240 F. App'x 865 (Fed. Cir. 2007) 11

New Kids on the Block v. News Am. Publ'g, Inc.,
971 F.2d 302 (9th Cir. 1992) 6, 16, 17

Radiance Found., Inc. v. NAACP,
786 F.3d 316 (4th Cir. 2015) 16

Rogers v. Grimaldi,
875 F.2d 994 (1989) 16

S.F. Arts & Athletics v. U.S. Olympic Comm.,
483 U.S. 522 (1987) 8, 15

STATUTES AND OTHER AUTHORITIES

First Amendment to the U.S. Constitution . . . . . *passim*

15 U.S.C. § 1051(b)(1) 7

Cited Authorities

Page

15 U.S.C. § 1112 26

15 U.S.C. § 1117 7

15 U.S.C. § 1121 7

15 U.S.C. § 1127 6

15 U.S.C. § 1702 7

S. Ct. R. 37 1

Adam D. Galinsky, Kurt Hugenberg, Carla Groom, Galen Bodenhausen, *The Reappropriation of Stigmatizing Labels: Implications for Social Identity*, 5 Research on Managing Groups and Teams 221 (2003) 10

Colorado Research in Linguistics 1 (2004) 10

Douglas Harper, *Online Etymology Dictionary*: "Yankee." (2013) 9

Gilbert C. Gee, Annie Ro, Salma Shariff-Marco, David Chae, *Racial Discrimination and Health Among Asian Americans: Evidence, Assessment, and Directions for Future Research*, 31(1) Epidemiological Reviews 130 (2009) 23

Page

Hyung Chol Yoo, Gilbert C. Gee, D. Takeuchi, *Discrimination and health among Asian American immigrants: Disentangling racial from language discrimination.* 68(4) Soc. Sci. Med. 726 (2008).....21, 25

Jason Silverstein, *How Racism is Bad for Our Bodies,* The Atlantic (Mar. 12, 2013).....22

Jennifer Wang, John Oliver Siy, Sapna Cheryan, *Racial Discrimination and Mental Health Among Asian American Youth,* in Asian American and Pacific Islander Children and Mental Health Volume 1 219 (Frederick T.L. Leong, Linda Juang, Desiree Baolian Qin & Hiram E. Fitzgerald eds., 2013)..... 23, 25

Jessica M. Kiser, *How Dykes on Bikes Got It Right,* 46 U.S.F. L. Rev. 1 (2011-2012).....19

Jonathan Long, *Welcome to the New Era of Viral Shock Marketing,* Huffington Post (Oct. 25, 2013).....20

Jordan Tidwell, *FBI Investigates Graffiti Vandalism at Two Fort Smith Mosques* (Oct. 20, 2016).....25

Liam Stack, *Hate Crime Inquiry Opened Into Vandalism of Sikh Temple in California,* N.Y. Times (Dec. 9, 2015).....25

Cited Authorities

Page

Louise Liu, *Asian-Americans share stories of racism after a New York Times editor was told to 'go back to China,'* Business Insider (Oct. 11, 2016) 24

Melissa Eddy and James Kanter, *German E.U. Official Is in Trouble Over Remarks About Chinese*, N.Y. Times (Oct. 31, 2016) 24

Michael Luo, *'Go Back to China': Readers Respond to Racist Insults Shouted at a New York Times Editor*, N.Y. Times (Oct. 10, 2016).....24

Michael Luo, *An Open Letter to the Woman Who Told My Family to Go Back to China*, N.Y. Times (Oct. 9, 2016) 23

Oliver Wendell Holmes, Jr., *The Common Law 15* (Paulo J.S. Pereira & Diego M. Beltran eds., University of Toronto Law School Typographic Society 2011)(1881) 15

Renee Jorgenson Bolinger, *The Pragmatics of Slurs*, 49(1) Noûs, 1 (2015).....9, 10

Robin Brontesema, *A Queer Revolution: Reconceptualizing the Debate Over Linguistic Reclamation* (2004) 10

Sonia Y. Katyal, *Trademark Intersectionality*, 57 UCLA L. Rev. 1689 (2009-2010).....12

Cited Authorities

Page

Tim Padgett, *Another South Florida Mosque Vandalized, Anti-Muslim Hate Crimes Rising* (Nov. 3, 2016) 25

Todd Anten, *Self-Disparaging Trademarks and Social Change: Factoring the Reappropriation of Slurs into Section 2(A) for the Lanham Act*, 106 Colum. L. Rev. 388 (Mar. 2006).....18

U.S. Dep't of Health and Human Servs. (2001). Mental Health: Culture, Race and Ethnicity—A Supplement to Mental Health: A Report of the Surgeon General. (2001) 22

Woman – or Suffragette? Oxford Dictionaries Blog 9

Zachary Zane, *6 Reasons You Need to Use the Word Queer*, Pride (Aug. 4, 2015).....10

INTEREST OF *AMICI CURIAE* AND SUMMARY OF ARGUMENT

Amici are a coalition of civil rights and advocacy groups that represent communities historically targeted—and still attacked today—by degrading racial, ethnic, and religious slurs.[1] A full list of amici is provided in Appendix A.

Many *amici* are also fans of respondent Simon Tam and his band The Slants. *Amici* support efforts to reclaim and reappropriate derogatory terms, but believe that socially progressive reclamation movements are not an excuse to open federal trademark registration to vile epithets and hateful marks.

Amici submit this brief to counter the rote and overly simplistic arguments about reclamation accepted by the court of appeals below. The First Amendment principles at stake in this case are complex and require balancing. Trademark rights are primarily rights of ownership and exclusion. As a result, federal registration of a mark functionally removes registered words and terms from collective use nationwide. Thus, registration can be a powerful tool to block and skew debate, and it can impair or slow reclamation efforts by minority communities by restricting the ability of non-trademark owners to use and redefine disparaging words and terms.

---

1. No party or its counsel wrote or helped write this brief, or gave money intended to fund its writing or submission, *see* S. Ct. R. 37. Blanket permission to write briefs is filed with the Court.

Tam acknowledges that the point of his federal trademark registration is to "deter other bands from calling themselves The Slants" regardless of their message or counter-message in ongoing debates about Asian stereotypes or the meaning of "slants."[2] Likewise, in related litigation over the Washington REDSKINS trademark, a professional football team is fighting to keep exclusive ownership and control over a term that many Native American groups and individuals view as dehumanizing. Because REDSKINS is federally registered, the team can threaten a federal lawsuit and invoke federal law to prevent a Native American band from calling itself the "The Redskins" even if the band is attempting to challenge stereotypes and reclaim the slur.

As these examples illustrate, the Lanham Act does not operate neutrally with respect to expression or reclamation efforts. Instead, it vests nationwide property rights—and the right to *reappropriate* terms—in the first registrant. For that reason, facial invalidation of the Lanham Act's disparagement clause is overbroad. It invites and incentivizes commercial appropriation of derogatory slurs without counterbalancing statutory protection for reclamation by minority and oppressed communities.

While First Amendment concerns about reclamation suffuse this case, genuine concern for free expression requires a more tailored remedy. *Amici* submit this brief to explain two key points and to propose a more nuanced solution than either side or the courts below have offered.

---

2. Brief for the Respondent in Opposition to the Petition for Certiorari ("Br. in Opp.") at 23.

First, the complexities of First Amendment analysis make it easy to overlook the foundational purpose of the Lanham Act. The Lanham Act was enacted to facilitate commerce, not to promote or protect expression. This makes federal registration of trademarks a double-edged sword: depending on circumstance and context, registration is just as likely to hinder speech—particularly speech reclaiming disparaging marks—as promote it.

Second, there is room within the existing statutory framework to consider expressive interests and recognize reclamation when determining whether a proposed mark is, in fact, disparaging. But any analysis must also recognize that reclamation is a collective effort, rather than a unilateral one. Changing the meaning of slurs and other derogatory terms with entrenched historical and cultural connotations requires collective action and community acceptance—a reality that counsels against uncritical deference to any single individual's claim to be "reclaiming" a hateful and discriminatory term. The painful collateral damage of encouraging the widespread commercial use of offensive and derogatory terms must also be considered.

Amici recognize that "The Slants" is not the same as the "Redskins." Tam may well qualify for registration if he provides additional information under a more comprehensive and nuanced disparagement analysis that considers both the expressive interest in reclamation and the potential harmful effects of the proposed mark. Providing Tam with *individual* relief, however, does not require, nor support, wholesale invalidation of the Lanham Act's disparagement provision.

Amici are united in warning the Court about the harms of the court of appeals' overbroad holding. While *amici* take differing positions with respect to Tam's personal entitlement to registration, all *amici* urge the Court to adopt a narrower holding. Completely removing the federal bar on registration of disparaging marks does not empower minority communities by aiding reclamation; it only threatens vast social harm by opening the federal registration system to misuse and the benefits of registration to "epithets" and terms of "personal abuse," speech this Court declined to shield and safeguard under the Constitution.[3]

Amici urge the Court to adopt a narrower holding. Rather than a judicial sledgehammer, this case calls for a sharper judicial scalpel to balance the interests of free speech and the strong public policy against prejudice, discrimination, and aiding in the commercial appropriation of slurs and disparaging terms.

ARGUMENT

I. PROTECTING RECLAMATION EFFORTS DOES NOT JUSTIFY FACIALLY INVALIDATING THE LANHAM ACT'S DISPARAGEMENT PROVISION

Hard cases make bad law. The decision below is an example of that axiom—prompted in part by the circuit court's and Tam's focus on trademarks being used to reclaim and reappropriate derogatory terms. The focus on reclamation as the turning point for constitutional analysis is misleading. It fails to examine the relationship between Tam's personal goals and the statutory scheme at issue.

---

3. *Cantwell v. Connecticut*, 310 U.S. 296, 309-310 (1940).

The Lanham Act as a whole, and the disparagement provision in particular, were not designed to accommodate Tam's individual mission—and with good reason. The Lanham Act is primarily concerned with facilitating national trade and commerce, not expression, and certainly not with efforts to reclaim degrading slurs. Understood in its statutory context, the Lanham Act's disparagement provision has a neutral and utilitarian purpose: to deny the privileges of federal registration to derogatory marks that do not advance Congress's functional trade-based goals.

A. The Lanham Act and Federal Registration of Trademarks Are Designed to Facilitate Commerce, Not Protect or Promote Private Expression

The controversy over federal registration in this case obscures how the Lanham Act operates in the area of trademark protection. Federal law does not create trademarks or trademark rights. Both arise under common law through the actual use of a mark in commerce.[4] Here, for example, Tam used "The Slants" as his band's name for five years before seeking federal trademark registration. From the founding of his band, Tam was—and still is—able to invoke common-law protection for "The Slants" without the additional step of federal registration under the Lanham Act.

The foundational common-law protections for trademarks are grounded in the value of marks for product identification, not expression. The barebones requirements for marks reflect the narrow basis for their recognition:

---

4. *See In re Trade-Mark Cases*, 100 U.S. 82, 92 (1879).

marks are not required to have (nor expected to include) any message or expressive component; they only have to be used in actual trade and be associated with a product or service.[5] Trademark law treats marks as a form of private property, not a form of expression, granting markholders the exclusive right to "own" marks and prevent others using the mark for commercial purposes.

The actual impact of recognizing property rights in trademarks is not to purposefully foster expression, debate, or commentary, but rather to sanction "the removal of words" from "our [collective] language" by vesting ownership and control of those words in the trademark holder.[6] The common law accepts this "cost" because trademarks enhance the commercial marketplace and advance the related goals of protecting consumers from deception and protecting the mark holder from misappropriation.

Federal registration under the Lanham Act supplements common-law trademark rights, and is offered to spur and encourage nationwide commerce and business investment.[7] By registering, mark owners get additional benefits conferred by federal law that extend beyond the common-law rights earned through actual use of the mark. For example, federal registration provides nationwide constructive notice of the use and ownership of a claimed

---

5. *Id.* at 94 (explaining that trademark protection "does [not] depend upon novelty, invention, discovery, or any work of the brain" and "requires no fancy or imagination, no genius").

6. *New Kids on the Block v. News Am. Publ'g, Inc.*, 971 F.2d 302, 306 (9th Cir. 1992).

7. 15 U.S.C. § 1127.

mark.[8] While common law limits trademark rights to only those geographic areas where a mark has actually been used, the Lanham Act gives federal registrants exclusive rights to use a mark *across the United States*—even in areas where the registrant conducts no business or trade.[9] The Lanham Act broadens the scope of exclusivity still further. Trademarks cannot be reserved in advance under common-law, but the Lanham Act permits registrants to pre-register marks not yet in actual use, so long as the registrant attests to having *bona fide* intent to use the mark in the future.[10]

The Lanham Act also arms federal registrants with powerful nationwide tools to shield and control their mark, including the ability to bring infringement suits in federal court and to recover treble damages and attorney's fees.[11] These procedural tools enhance the registrant's exclusive control over the claimed mark—providing a statutory incentive for parties to expand their businesses and conduct interstate trade.

The framework for the Lanham Act helps explain the function of the disparagement provision. Like other provisions of the Act, it is not concerned with expression.[12] The disparagement provision can be viewed

---

8. *Id.* § 1702.

9. *Id.*

10. *Id.* § 1051(b)(1).

11. *Id.* §§ 1117, 1121.

12. This can be seen not only in the statutory provisions that Congress enacted, but also in the provisions left out of the Lanham

instead as a limitation that protects the statutory *quid quo pro*. For those purposes of spurring trade and protecting consumers, enhancing private property rights to disparaging marks—and assisting in their use and appropriation nationwide—makes little sense. At a minimum, Congress could reasonably conclude that aiding in the dissemination of disparaging marks is "disruptive to commerce,"[13] and, as a result, there was no compensating public benefit or valid federal interest in providing the federal benefits of registration to disparaging marks.[14]

B. Opening the Property-Based Benefits of Federal Registration to Slurs and Derogatory Marks Impairs Reclamation Efforts by Minority Communities

Relying on Tam's claimed goal of reclamation, the court of appeals facially invalidated the Lanham

---

Act. Unlike federal copyright law, for example, which is concerned with expression, the Lanham Act includes no statutory defenses for fair or nominal use for ordinary trademarks—an absence that confirms the Lanham Act's exclusive focus on commerce.

Courts have crafted judicial exceptions for nominal use and parody involving registered trademarks, but these exceptions are piecemeal and under certain limitations on the Lanham's Act expanded protections for federally registered marks.

13. Pet. App. 119a.

14. *See S.F. Arts & Athletics v. U.S. Olympic Comm.*, 483 U.S. 522, 540 (1987) (confirming that Congress can reasonably draw broad category-based conclusions about whether use of certain marks is likely to be confusing or antithetical to the purposes of federal trademark laws—despite claims about individual political or expressive use).

Act's disparagement provision—making the provision inapplicable to all marks, including undeniably derogatory and disparaging marks designed to insult and "harm[] members of oft-stigmatized communities."[15] But relying on the progressive tradition of reclamation to invalidate the disparagement provision is backwards.

Reclamation is the process of taking a word that was previously considered pejorative, and bringing it back into accepted usage. Reclamation is not a new phenomenon—examples of reclaimed words include some as timeworn as "suffragette" (originally a term of derision to describe members of London's Women's Social and Political Union)[16] and "Yankee" (originally a derogatory term used against Dutch American settlers).[17]

Successful reclamation occurs in stages and is based on "undermining the signal strength of the slurring term."[18] First, "a group of speakers who reject the derogation of the target use the slur defiantly."[19] Second, "[a]s this group grows, the likelihood that a user of the term holds derogatory attitudes falls," causing the

---

15. Pet. App. 2a.

16. *Woman – or Suffragette?* Oxford Dictionaries Blog, http://blog.oxforddictionaries.com /2013/05/woman-or-suffragette/.

17. Douglas Harper, *Online Etymology Dictionary*: "Yankee." (2013), http://www.et ymonline.com/index.php?search=yankee.

18. Renee Jorgenson Bolinger, *The Pragmatics of Slurs*, 49(1) Noûs, 1, 1-24 (2015), http://philpapers.org/archive/BOLTPO-7.pdf.

19. *Id.*

perjorative connotation of the slur to "degrade"[20] Third, reclamation succeeds when the disparaging meaning of the slur "has been so diluted as to carry no information: the term is at least as likely to be used positively as it is to be used by those who hold objectionable attitudes."[21] At that point, it is possible to support use of a prior slur "without by default licensing rational offense."[22]

The last twenty to thirty years have witnessed the successful reclamation of several words previously considered pejorative to minority groups. For example, the word "queer" was reclaimed by the gay and lesbian communities in the 1990s.[23] "By refusing to perceive 'queer' as demeaning, in-group members make it more difficult for out-group members to gain recognition for their own display of superiority, thereby undermining one of the functions of prejudice."[24] Though the reclamation has not been without controversy, the term is now embraced and used by many of the groups and individuals it originally targeted.[25] Similarly, the word "dyke" has been

---

20. *Id.*

21. *Id.*

22. *Id.*

23. Robin Brontesema, *A Queer Revolution: Reconceptualizing the Debate Over Linguistic Reclamation* (2004), 17(1) Colorado Research in Linguistics 1, 1-17 (2004).

24. Adam D. Galinsky, Kurt Hugenberg, Carla Groom, Galen Bodenhausen, *The Reappropriation of Stigmatizing Labels: Implications for Social Identity,* 5 Research on Managing Groups and Teams 221, 231-232 (2003).

25. *See, e.g.*, Zachary Zane, *6 Reasons You Need to Use the Word Queer*, Pride, (Aug. 4, 2015), http://www.pride.com/queer/2015/8/04/6-reasons-you-need-use-word-queer.

reappropriated by the lesbian community, as recognized by the Federal Circuit's decision permitting a lesbian group to trademark the term "Dykes on Bikes."[26]

Support for reclamation movements does not mandate constitutional invalidation of the disparagement clause however. Historically, reclamation has been based on collective social action—not trademarking of slurs by individual parties or businesses. And while federal registration may aid in reclamation efforts, opening the benefits of federal registration to disparaging marks, without qualification or further analysis, also threatens to block reclamation of slurs and terms of abuse by minority communities. It would allow businesses to register—and commercially *appropriate*—marks like The REDSKINS, freezing pejorative meanings in place and removing derogatory terms from communal debate and actual control by the groups targeted by a disparaging mark.

Again, the Lanham Act is not pro-speech. By expanding the exclusive nature of a trademark, federal registration of marks actually inhibits speech by *precluding* their use by anyone else. Registering the mark expands the markholder's ability to sue other people who try to use the mark and *stop* speech, debate, and commentary. If the Washington "Redskins" football team is allowed to exclusively own the term REDSKINS, for example, the team can sue Native American protesters who use the term and logo in their protests (in protest posters, in protest t-shirts, or other items).

---

26. *McDermott v. S.F. Women's Motorcycle Contingent*, 240 F. App'x 865 (Fed. Cir. 2007).

The threat of chilling speech, and of markholders acing to suppress expression is not hypothetical. For example, when a Native American student at the University of North Dakota made a series of pins to express his disagreement with the University's "Fighting Sioux" logo and the logo's stereotypical portrayal of Native Americans, the University threatened to sue the student for trademark infringement. Intimidated, the student dropped his plan to protest through the pins.[27] Because the Lanham Act vests exclusive rights in the registrant, irrespective of reclamation goals, facial invalidation of the disparagement provision may have the baleful effect of *impinging* on free speech critical to reclamation movements, not protecting it.

For all these reasons, it is far too simple to cast facial invalidation of section 2(a) as an unqualified win for reclamation, let alone accept that it is "[m]inority groups" who are harmed by denying registration to racial and ethnic slurs and other disparaging marks.[28] *Amici* agree that reappropriation of slurs is a powerful social tool, but reclamation efforts are not furthered by opening the door to commercial appropriation of disparaging terms with no balancing of other factors or associated harms.

---

27. *See* Sonia Y. Katyal, *Trademark Intersectionality*, 57 UCLA L. Rev. 1689 (2009-2010), http://ir.lawnet.fordham.edu/faculty_scholarship/337.

28. Brief for the ACLU, et. al., as Amici Curiae Supporting Appellants, *In re Tam*, No. 14-1203 (Fed. Cir. Dec. 22, 2015).

II. VOIDING SECTION 2(a) IS COUNTERPRODUCTIVE WHEN EXPRESSIVE CONCERNS CAN BE WEIGHED UNDER A BALANCED DISPARAGEMENT ANALYSIS

Instead of striking down the disparagement clause as unconstitutional, *amici* urge the Court to reach a narrower holding that accounts for the free speech concerns on all sides and considers the interests of minority groups in guarding against disparagement.

A. The Compelling Interests at Stake Call for a Balanced Remedy

Amici recognize and are sensitive to the First Amendment issues in this case. But ignoring the commercial roots and the function of the Lanham Act, and failing to recognize *all* of the First Amendment interests at stake is harmful. The government should not be compelled, in the name of free speech, to put its heavy thumb on the scales and create a federally supported monopoly for commercial trademarks disparaging to minority groups in American society.

Invalidating the disparagement provision is overbroad in cases where no reclamation interest is asserted. And even when reclamation is raised, a more balanced approach is warranted. Tam's own mission highlights the dilemma. His goal of "reclamation" only makes sense because "slants" has a disparaging meaning in reference to Asian Americans *now*. Absent that current meaning, there would be no derogatory usage or connotation to reclaim and no progressive message to convey. Moreover, Tam's positive use of the term does not eliminate the potential harm flowing from its pejorative meaning.

The competing concerns are complicated, and a simplistic First Amendment analysis—focused only on the self-described expressive interest of the registrant—is neither adequate nor sufficient. Rather than facial invalidation, Tam's claims about reclamation, and other claims about expressive components of marks, can and should be weighed under a balanced disparagement analysis that also accounts for the harms caused by disparaging marks.

Amici leave it to the parties and other briefs to explain the specific doctrinal reasons for not opening the federal trademark registration system to slurs and derogatory marks. But one point bears emphasis and explains why a more balanced analysis is appropriate. Tam and other registrants should not be penalized because they seek to register a mark with an expressive component. But neither should their private expressive intent override the government's interest in not subsidizing disparaging marks, and not lending government resources to facilitate the commercial appropriation of slurs.

The private expressive goals of applicants—even if related to political issues—do not alter the essential commercial nature of trademarks. It is the latter that the Lanham Act is concerned with, regardless of the ancillary goals of individual applicants like Tam. While individual applicants may seek to use marks to express a message, they are not entitled to hijack the statute and turn the Lanham Act into a federal subsidy for private speech.[29]

---

29. *See Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 67-68 (1983) (reaffirming that advertising and promotional materials is permissibly regulated as "commercial speech" even if "they contain

A balanced approach also honors the real-world complexities presented by this case. Denying federal trademark registration on disparagement grounds is not a true restriction on speech in the ordinary sense. The applicant can still use any term (*e.g.*, "The Slants") as a common law mark for his band or any other product. The applicant can say anything he wants. His speech is not abridged. Any potential impact on individual expressive goals properly is "*incidental* to the primary congressional purpose" of promoting nationwide commerce without facilitating the use and appropriation of disparaging marks.[30]

The harm of authorizing disparaging marks by contrast are not incidental. A First Amendment analysis that ignores the ensuing harms would improperly give short shrift to what Justice Holmes famously called the "felt necessities of the time."[31] It pays insufficient heed to the importance of avoiding the impact of racial and ethnic disparagement in our society, and it fails to adequately assess the power that minority groups can achieve through reappropriation.

B. A More Nuanced Approach

Instead of striking down section 2(a) as unconstitutional, more tailored remedies are available to determine whether

---

discussions of important public issues" or otherwise "link[ ]a product to a current public debate.").

30. *See S.F. Arts and Athletics*, 483 U.S. at 536 (emphasis added).

31. Oliver Wendell Holmes, Jr., *The Common Law 15* (Paulo J.S. Pereira & Diego M. Beltran eds., University of Toronto Law School Typographic Society 2011)(1881)

a proposed mark is, in fact, disparaging.[32] This approach not only strikes the proper balance between the competing interests at stake, but it comports with the Court's principle of constitutional avoidance.[33]

Constitutional avoidance can be particularly valuable in the trademark context: "[b]ecause overextension of Lanham Act restrictions . . . might intrude on First Amendment values, [courts] must construe the Act narrowly to avoid such a conflict."[34] Indeed, courts have taken this tack in similar situations. For example, in *New Kids on the Block v. News America Publishing, Inc.*, 971 F.2d 302 (9th Cir. 1992), the Ninth Circuit declined to grant broad First Amendment immunity from Lanham Act claims.[35] Instead, the Ninth Circuit crafted a new

---

32. Tam raised an as-applied challenge to the denial of his registration application below and has also suggested that this Court resolve the case on an as-applied basis.

33. *See Ariz. State Legislature v. Ariz. Independent Redistricting Comm'n*, 135 S. Ct. 2652, 2689 (2015) ("when 'a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided'" (citing *Crowell v. Benson*, 285 U.S. 22, 62 (1932)).

34. *See Rogers v. Grimaldi*, 875 F.2d 994, 998; *see also Radiance Found., Inc. v. NAACP*, 786 F.3d 316, 322 (4th Cir. 2015) ("The canon of constitutional avoidance in this area [of the Lanham Act] is thus not a device of judicial evasion but an effort to reconcile the commercial values protected by the Lanham Act and the democratic value of expressive freedom.").

35. *New Kids*, 971 F.2d at 305 ("Indeed, where we are able to resolve the case on nonconstitutional grounds we ordinarily must avoid reaching the constitutional issue.").

fair use test, holding that a commercial user is entitled to a fair *nominative* use of a mark where "the only word reasonably available to describe a particular thing" is the trademarked term.[36]

Here, *amici* do not purport to set forth a specific test for the Court to adopt, they offer several factors that the Court should consider in formulating such a test. In proposing these factors, *amici* aim to identify considerations that will more objectively assess whether a mark is disparaging, and strike the correct balance in this context of promoting speech and protecting minority groups from discrimination.

These factors include: (1) whether the mark is part of a reclamation effort; (2) the potential harmful effects of the term, and (3) how expressive the mark is. These factors are not exclusive, and while they should not end the inquiry into whether a mark is disparaging, *amici* propose that they are a better start.[37]

1. Whether the Mark Is Part of Reclamation Efforts

Norms regarding racial and ethnic slurs are always in flux, and the law must account for reclamation concerns in

---

36. *New Kids on the Block*, 971 F. 2d at 308.

37. There is no question that case-specific application of these factors may be difficult. But that is no reason to discard the disparagement provision wholesale. "If adjudication is to be a rational process," Justice Frankfurter once said, "we cannot escape a candid examination of the conflicting claims with full recognition that both are supported by weighty title-deeds." *Dennis v. United States*, 341 U.S. 494, 519 (Frankfurter, J., concurring).

applying the disparagement provision. As Tam has pointed out, the Trademark Trial and Appeal Board (TTAB) has been inconsistent in its review of applications that include reclaimed terms.[38] Likely, this has to do with the difficult factual question that arises when the government—or anyone, for that matter—is trying to determine when a word has crossed over from disparaging to reclaimed. Many questions arise in this context: Can reclamation ever be truly successful? Who has standing to reclaim a word, and what kinds of inquiries, if any, should we make into a person's identity in this context? What if a word reclaimed by some members of a group is rejected by others? Can a word be both disparaging and reclaimed at the same time? These are difficult questions, but they do not warrant disposing of the disparagement inquiry altogether. To the contrary, they warrant serious consideration.

There are two ways in which we propose the Court should account for these difficult questions.

First, applicants should be allowed to submit evidence of reclamation in connection with their trademark applications, including evidence from linguists, sociologists, and other academics. Applicants could also submit community declarations of support for their mark. Giving applicants a chance to submit evidence of reclamation will ensure that the inquiry does not focus on the subjective intent of the applicant, but rather focuses on

38. Brief in Opp. at 31; *see also* Todd Anten, *Self-Disparaging Trademarks and Social Change: Factoring the Reappropriation of Slurs into Section 2(A) for the Lanham Act*, 106 Colum. L. Rev. 388 (Mar. 2006).

the use of the term in the relevant community.[39] Applicants should also be allowed to submit evidence of their own reclamation efforts with respect to the term they seek to trademark, though an applicant's individual efforts (or intent, for that matter) should not be dispositive. In this case, for example, Tam has a record replete with evidence of his work to reclaim the word "slants" through the expressive acts of his band over the past ten years.[40] But none of this information was ever considered by the PTO because it is not clearly part of the current disparagement analysis. Tam's expressive activity through his band should be considered, but it alone does not mean that the Asian American community has reclaimed the term. It is simply part of the larger body of evidence that should be considered.

Second, reclamation should only be considered as one factor of several in determining whether a mark is disparaging. If there is some minimal evidence of reclamation, but a mark is not used expressively and has a particularly pejorative history and meaning, then it may be rejected as disparaging. Reclamation should not open and close the inquiry, but it must be considered.

Thus, while some minority groups have successfully appropriated words like "gay" and "queer" previously considered disparaging, it cannot be the case that simply claiming reappropriation is enough to obtain trademark

---

39. This is precisely the sort of evidence that other applicants, such as the applicant for the DYKES ON BIKES mark have been able to submit. *See* Jessica M. Kiser, *How Dykes on Bikes Got It Right*, 46 U.S.F. L. Rev. 1, 2 (2011-2012).

40. Brief in Opp. at 3-4.

protection for an otherwise harmful and disparaging mark. Instead, this Court should adopt a test that looks holistically at whether the mark is being reclaimed, and the PTO should invite applicants to submit evidence of reclamation with their trademark applications.[41]

2. The history and potential harmful effects of the term

The collateral damage of encouraging widespread commercial use of offensive and derogatory marks also should not be ignored. Any analysis of whether to extend federal trademark protection to a disparaging term must therefore consider the potential effect of the mark on the target minority group.

Tam has urged the Court to consider his band name as part of the marketplace of ideas, but potential victims of broad dissemination of offensive marks (like children) often lack the resources to combat offensive and inflammatory trademarks. In today's climate, businesses are happy to engage in "shock marketing" tactics and cater to the lowest common denominator.[42] If the disparagement bar were removed, businesses could choose offensive brand names and marks—not for the

---

41. In this case, Lee did not initially submit evidence about the Asian American community's view of the term "slants" or provide material explaining if there was any movement (however nascent) to reclaim the term from its derogatory meaning, but he should have been given the opportunity to provide this additional information. J.A. 12-24; Pet. App. 168a-169a.

42. *See, e.g.*, Jonathan Long, *Welcome to the New Era of Viral Shock Marketing*, Huffington Post (Oct. 25, 2013), http://www.huffingtonpost.com/jonathan-long/welcome-to-the-new-era-of_b_4164671.html.

purpose of expression—but to capture attention and court controversy. While businesses may profit from these tactics, children and other members of minority groups would be left struggling to deal with and counteract the widespread use of slurs and other offensive words as a profit-driven marketing gimmick.

There can be no debate, at this point, that racial and ethnic slurs lead to harmful prejudice against minority groups.[43] Racial and ethnic slurs are not just words. They are words with consequences. And, in recent years, scientific literature has confirmed what many have long known: that discrimination—including through use of racial and ethnic slurs—is harmful to minority groups. Discrimination affects the mental and physical health of minority group members, as well as the ways in which a group functions within our society.[44]

---

43. This Court has a long history of relying on such information. *See, e.g. Brown v. Board of Educ.*, 347 U.S. 483, 494-95 (1954) (relying on social science research to demonstrate the harm caused by segregated schools); *see also Gratz v. Bollinger*, 539 U.S. 244, 299-300 (2003) (Ginsburg, J., dissenting) (looking to social science studies to illuminate the effect of discrimination on minority job and housing applicants); *Ballew v. Georgia*, 435 U.S. 223, 239 (1978) (holding that studies in the field of social psychology "lead [the Court] to conclude that the purpose and functioning of the jury in a criminal trial is seriously impaired, and to a constitutional degree, by a reduction in size to below six members"); *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 428 (1968) (noting presence of comprehensive studies stressing prevalence of private hostility toward minorities and the need to protect these targeted groups from resulting discrimination in housing sales).

44. Hyung Chol Yoo; Gilbert C. Gee; D. Takeuchi, *Discrimination and health among Asian American immigrants: Disentangling racial from language discrimination.* 68(4) Soc. Sci. Med. *726*, 726-732 (2008) [hereinafter Yoo (2008)].

Many studies have confirmed the correlation between racial discrimination and mental health. The U.S. Department of Health and Human Services has acknowledged this effect, stating that "racial and ethnic minorities in the United States face a social and economic environment of inequality that includes greater exposure to racism and discrimination, violence, and poverty, all of which take a toll on mental health."[45] Experiencing discrimination can lead to an increased risk of stress and depressive symptoms.[46] There are also physical effects of discrimination on minority groups, including increased risk of the common cold, hypertension, cardiovascular disease, breast cancer, and mortality.[47] And worse yet, studies have shown that there are higher rates of suicide in ethnic groups referred to by slurs than in other immigrant groups.[48]

Moreover, there are social effects of discrimination among target groups. Ethnic groups referred to by more simplified and negative slurs are "more likely to be segregated into ethnic neighborhoods; more likely to be deemed suitable for hazardous work; less likely

---

45. U.S. Dep't of Health and Human Servs. (2001). Mental Health: Culture, Race and Ethnicity—A Supplement to Mental Health: A Report of the Surgeon General. (2001).

46. Jason Silverstein, *How Racism is Bad for Our Bodies*, The Atlantic (Mar. 12, 2013), http://www.theatlantic.com/health/archive/2013/03/how-racism-is-bad-for-our-bodies/273911/.

47. *Id.*

48. Brief of Psychology Professors as *Amicus Curiae* in Support of Petitioners, *Harjo v. Pro-Football, Inc.*, No. 09-326 (Oct. 16, 2009), at 12.

to become naturalized citizens; and more likely to be subjected to harsher immigration quotas . . . [and] were more likely to be portrayed to children in negative ways."[49] Stereotyping, as conveyed through ethnic slurs, also creates limiting expectations as to what group members can achieve. This reinforces the actions of individuals who meet expectations, but can have negative—and even retributive—consequences for those who do not.[50]

Slurs against Asian Americans are not exempt from the harms described above. There is an incorrect perception in this country that Asian Americans are less likely to be the target of racial discrimination and less likely to suffer as a result of it.[51] But, in fact, many Asian Americans still report experiencing discrimination and stereotyping.[52] Just weeks ago, a New York Times editor was walking on the Upper East Side of Manhattan when a woman yelled at him to "Go back to China" and "Go back to your fucking country."[53] His story prompted a deluge

---

49. *Id.* at 11-12.

50. *Id.* at 12.

51. Gilbert C. Gee, Annie Ro, Salma Shariff-Marco, David Chae, *Racial Discrimination and Health Among Asian Americans: Evidence, Assessment, and Directions for Future Research*, 31(1) Epidemiological Reviews 130, 130-151 (2009); *see also* Jennifer Wang, John Oliver Siy, Sapna Cheryan, *Racial Discrimination and Mental Health Among Asian American Youth*, in Asian American and Pacific Islander Children and Mental Health Volume 1 219, 219-242 (Frederick T.L. Leong, Linda Juang, Desiree Baolian Qin & Hiram E. Fitzgerald eds., 2013) [hereinafter Wang (2013)].

52. Wang (2013), 219-242.

53. Michael Luo, *An Open Letter to the Woman Who Told My Family to Go Back to China*, N.Y. Times (Oct. 9, 2016), http://

of responses and stories from other Asian-Americans who had experienced similar discrimination.[54] Also in October 2016, a German official of the European Union caused an uproar by referring to Chinese people as "slit-eyes."[55]

And as with other groups, there is a relationship between perceived racial discrimination and decreased health in Asian Americans. From a mental health perspective, a national study of Asian American adults found that "self-reported racial discrimination was associated with a greater likelihood of having any depressive or anxiety disorder within the past 12-month period, even after controlling for many factors such as accumulative stress, family cohesion, self-rated health,

---

www.nytimes.com/2016/10/10/nyregion/to-the-woman-who-told-my-family-to-go-back-to-china.html.

54. Michael Luo, *'Go Back to China': Readers Respond to Racist Insults Shouted at a New York Times Editor*, N.Y. Times Oct. 10, 2016; Louise Liu, *Asian-Americans share stories of racism after a New York Times editor was told to 'go back to China,'* Business Insider (Oct. 11, 2016), http://www.businessinsider.com/asian-racism-michael-luo-new-york-times-go-back-to-china-2016-10.

55. Melissa Eddy and James Kanter, *German E.U. Official Is in Trouble Over Remarks About Chinese*, N.Y. Times, (Oct. 31, 2016), http://www.nytimes.com/2016/11/01/world/europe/eu-official-insults-chinese.html?module=WatchingPortal&region=c-column-middle-span-region&pgType=Homepage&action=click&mediaId=thumb_square&state=standard&contentPlacement=9&version=internal&contentCollection=www.nytimes.com&contentId=http%3A%2F%2Fwww.nytimes.com%2F2016%2F11%2F01%2Fworld%2Feurope%2Feu-official-insults-chinese.html&eventName=Watching-article-click&_r=0.

and poverty."[56] Physically, racial discrimination is "associated with increased chronic conditions among Asian Americans even after accounting for age, sex, education, family income, health insurance, primary language, nativity status, and ethnicity."[57] For example, among Asian Americans, there is a relationship between perceived racial discrimination and increased risk of mental disorders and depressive symptoms, including a lowered sense of coherence, self-esteem, and satisfaction with life.[58]

No minority group is exempt from these harms. As a nation, we continue to battle against the use of hateful slurs to target and intimidate minority communities. Recent days have also seen a dramatic escalation in incidents of hate speech directed at Muslim and Sikh Americans, for example, with mosques and temples being vandalized with slurs such as "F*** Islam, go home."[59] Hateful vandalism also continues to be directed at African American churches and institutions.[60] Any analysis of whether a term is disparaging

---

56. Wang (2013), 227.

57. Yoo (2008), 731.

58. Yoo (2008), 727.

59. *See* Liam Stack, *Hate Crime Inquiry Opened Into Vandalism of Sikh Temple in California*, N.Y. Times (Dec. 9, 2015); Jordan Tidwell, *FBI Investigates Graffiti Vandalism at Two Fort Smith Mosques* (Oct. 20, 2016), *available at* http://5newsonline.com/2016/10/20/fbi-investigates-graffiti-vandalism-at-two-fort-smith-mosques-suspects-wanted/; Tim Padgett, *Another South Florida Mosque Vandalized; Anti-Muslim Hate Crimes Rising* (Nov. 3, 2016), available at http://wlrn.org/post/another-south-florida-mosque-vandalized-anti-muslim-hate-crimes-rising.

60. Sara Zendehnam, *North Highlands Church Vandalized in Apparent Hate Crime*, WLRN (June 5, 2016), http://wlrn.org/post/another-south-

must consider the harmful effects of encouraging commercial use of disparaging terms on other minority communities and the risks of promoting hateful speech.

3. The expressive context of the mark and requested use

This Court should also fashion a test that takes into account the requested use of the mark and expressive context in question. Logos, slogans, and other marks that more heavily incorporate expressive context should be stronger candidates for trademark protection than those that do not. Relatedly, the use of the mark matters.[61] Here, Tam sought to register "The Slants" in connection with planned live performances of his band.[62] Thus, not only does the mark sought identify an expressive activity: musical performance; the registered trademark would also be used in an artistic setting that would provide audience members (and other member of the public) with a comprehensive message-laden context (including the lyrics to the band's songs and the band's on-stage performance) to understand and appreciate the "wry" and "subversive" aspects of the mark that render it non-disparaging according to Tam.

---

florida-mosque-vandalized-anti-muslim-hate-crimes-rising ("Nig***" at predominantly African American church); Sarah Beth Hensley, *5 teens charged in historic Va. Schoolhouse vandalism*, WTOP (Oct. 20, 2016), http://wtop.com/loudoun-county/2016/10/5-teens-charged-in-historic-va-schoolhouse-vandalism/slide/1/ ("white power" at historic African American schoolhouse).

61. *See* 15 U.S.C. § 1112 (providing for the registration of trademarks based on class of planned use for goods or services).

62. J.A. 12-24.

The same context would likely be missing if "The Slants" were registered for a commercial product, like shoes or a beverage, without obvious artistic or expressive connection. The TTAB has recognized that use and context matter in connection with the *In re Heeb Media* registration application. There registration of HEEB was accepted as a mark for magazines, but was denied as a mark for non-magazine promotional materials such as T-shirts and mugs.[63] While "heeb" is a slang term for Hebrew with a long history of anti-Semitic use,[64] the context of the accepted mark, as the title of a magazine whose content was about, and offered for, the Jewish community, provided context for consumers to understand the non-disparaging "reclaimed" meaning of the mark. On T-shirts and other products, by contrast, the expressive context was absent and there were less cues to guard against understanding the term "heeb" in its customary, derogatory sense.

This Court has always afforded greater First Amendment protection to expressive speech compared to commercial speech.[65] Although, as argued above, the purpose of the Lanham Act is not to protect the First Amendment or to guarantee anyone the right to expression, factoring expressiveness into a disparagement analysis will help to correctly balance the First Amendment interests with the interests of minority groups.

---

63. *In re Heeb Media, LLC*, 89 U.S.P.Q.2d (BNA) 1071-72 (T.T.A.B. 2008).

64. *Id.* at 1071-73.

65. *See Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 562-63 (1980) ("The Constitution therefore accords a lesser protection to commercial speech than to other constitutionally guaranteed expression.").

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be vacated and remanded for further proceedings.

Dated: November 14, 2016

Respectfully submitted,

CECELIA CHANG
ASIAN AMERICANS ADVANCING JUSTICE | AAJC
1620 L Street, Suite 1050
Washington, DC 20036
(202) 296-2300

DANIEL J. KORNSTEIN
Counsel of Record
ALANNA SMALL
EMERY CELLI BRINCKERHOFF & ABADY LLP
600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000
dkornstein@ecbalaw.com

Counsel for Amici Curiae

APPENDIX — LIST OF *AMICI CURIAE*

Rooted in the dreams of immigrants and inspired by the promise of opportunity, **Asian Americans Advancing Justice | AAJC (Advancing Justice | AAJC)** is a national nonprofit organization founded in 1991. Based in Washington D.C., Advancing Justice | AAJC works to advance civil and human rights for Asian Americans and to build and promote a fair and equitable society for all. Along with our Advancing Justice affiliates, Advancing Justice | AAJC works to promote justice and bring national and local constituencies together through community outreach, public policy advocacy, and litigation.

Asian Americans Advancing Justice – Atlanta (formerly Asian American Legal Advocacy Center or AALAC) is the first non-profit law center dedicated to Asian immigrants and refugees (Asian Americans) in the Southeast. The center's goal is to engage, educate and empower under-represented Asian Americans to greater civic participation. Asian Americans Advancing Justice – Atlanta is one of five independent organizations that make up the national Asian Americans Advancing Justice affiliation.

Asian Americans Advancing Justice – Chicago (AAAJ-Chicago) is a nonprofit organization that works to empower the Asian American community through advocacy, education, research, and coalition building. AAAJ – Chicago fights for laws and policies that promote social, economic, and political equity for the Asian American community as a whole.

Appendix

The **Asian Law Alliance (ALA)** is a non-profit law office founded in 1977 by law students from Santa Clara University School of Law. ALA's mission is to provide equal access to the justice system to Asian and Pacific Islanders and low income residents of Santa Clara County. ALA provides legal services in the areas of public benefits, civil rights, domestic violence, landlord and tenant law and immigration law.

Asian Pacific American Labor Alliance, AFL-CIO (APALA) is the first and only national organization of AAPI union members and allies to advance worker, immigrant, and civil rights. Backed by the AFL-CIO, APALA has 18 chapters and a national office in Washington, D.C. Since its founding in 1992, APALA has played a unique role in serving as the bridge between the broader labor movement and the AAPI community.

Asian Services In Action, Inc. (ASIA) is the largest Asian American & Pacific Islander (AAPI)-focused health and social service non-profit agency in the state of Ohio. For over 20 years, ASIA has taken on the most challenging tasks to help the underserved, low-income, refugee and immigrant communities. ASIA's mission is to empower and advocate for Asian Americans & Pacific Islanders (AAPIs); and to provide AAPIs and other communities with access to health and social services and culturally and linguistically appropriate information.

The Institute for Asian Pacific American Leadership & Advancement IAPALA was established in 2011 to build capacity through our chapters and partnerships

with local and national AAPI organizations. Alongside our sister organization APALA, IAPALA is working to ensure broader education, civic engagement, and capacity building for the AAPI community.

The **Laotian American National Alliance (LANA)** is the oldest and only national Laotian American non-partisan advocacy group in the United States. LANA's mission is to mobilize Laotian Americans by promoting social and economic advancement through civic participation and public policy advocacy. LANA advocates for social justice, civil rights, and equality for all multi-ethnic people from the community of Laos.

National Council of Asian Pacific Americans (NCAPA) is a coalition of thirty-five national Asian Pacific American organizations around the country. Based in Washington, D.C., NCAPA serves to represent the interests of the greater Asian American (AA) and Native Hawaiian Pacific Islander (NHPI) communities and to provide a national voice for the communities' concerns.

The **National Federation of Filipino American Associations (NaFFAA)** is an organization built upon ideals that seek to unite people with common goals, develop our current and future leaders, and advocate for issues that pertain to Filipinos and Filipino Americans. We are encouraged by the discourse of all parties involved that has resulted from this pending litigation. It has provided all those involved a chance to examine the facts, and the repercussions of the case. The result of the litigation would have implications across the broad spectrum of diversity

in the United States, including the Filipino American community. As such, NaFFAA would like to be included in the amicus brief.

OCA - Asian Pacific American Advocates (OCA) is a national, membership-driven organization dedicated to advancing the social, political, and economic wellbeing of Asian Pacific Americans. Through its 100 chapters and affiliates across the nation, OCA engages in policy advocacy, community organizing, and programming to advance the civil rights of Asian Pacific Americans, including the protection of our communities from disparaging racial comments.

The **Southeast Asia Resource Action Center (SEARAC)** is a national organization that advances the interests of Cambodian, Laotian, and Vietnamese American communities who came to this country as the largest group of refugees ever resettled in the U.S. Like many other immigrants and refugees, Southeast Asian Americans have been the target of racial slurs for decades, many with their origins in destructive U.S. foreign policies. Today our youth continued to be bullied and our communities targeted for our perceived racial and ethnic identities. In line with our commitment to fight for an equitable and just society for all immigrant communities, SEARAC joins its colleagues in this amicus brief in support of legal protections delineating the boundary between free speech and hate speech.